

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

AMY FREDERICK,

Plaintiff,

v.

LELAND DUDEK, Acting Commissioner
of Social Security,¹

Defendant.

8:23CV518**ORDER**

This matter is before the Court on countervailing motions filed by plaintiff Amy Frederick (“Frederick”) and defendant Leland Dudek, Acting Commissioner of Social Security (“Commissioner”). *See* 42 U.S.C. § 405(g). On September 21, 2023, the Commissioner denied Frederick’s application for a period of disability and disability insurance benefits under Title II of the Social Security Act (the “Act”), 42 U.S.C. § 401 *et seq.*, and protective application for supplemental security income under Title XVI of the Act, 42 U.S.C. § 1381 *et seq.*, concluding she was not disabled under the Act (Filing No. 13-2). Frederick moves (Filing No. 20) for an order reversing the Commissioner’s decision; the Commissioner moves (Filing No. 25) for an order affirming her decision.

The Court referred the matter to a magistrate judge² for review pursuant to 28 U.S.C. § 636(b)(1)(B) (permitting referral of dispositive matters). On January 23, 2025, the magistrate judge issued an Amended Findings and Recommendation (Filing No. 31) recommending the Court grant each motion in part and deny each motion in part and remand the case for further review. *See* 42 U.S.C. § 405(g) (authorizing the Court to “enter,

¹Leland Dudek is now the Acting Commissioner of Social Security and is automatically substituted as the defendant in this action pursuant to Federal Rule of Civil Procedure 25(d).

²The Honorable Jacqueline M. DeLuca, United States Magistrate Judge for the District of Nebraska.

upon the pleadings and transcript of the record, a judgment affirming, modifying, or reversing the decision of the Commissioner of Social Security, with or without remanding the cause for a rehearing”); *Shalala v. Schaefer*, 509 U.S. 292, 296-97 (1993) (describing the difference between a sentence six remand and a sentence four remand under § 405(g)); *Buckner v. Apfel*, 213 F.3d 1006, 1010 (8th Cir. 2000) (noting “[a] sentence four remand is . . . proper whenever the district court makes a substantive ruling regarding the correctness of a decision of the Commissioner”).

The magistrate judge also notified the parties that failing to timely object to her Findings and Recommendation could constitute “a waiver of any right to appeal the Court’s adoption of the recommendation.” Neither party objected, and the time to do so has now passed.

Under § 636(b)(1), the Court must “make a de novo review of . . . specified proposed findings or recommendations to which objection is made.” Absent objection, however, further review is unnecessary. *See Peretz v. United States*, 501 U.S. 923, 939 (1991); *Leonard v. Dorsey & Whitney LLP*, 553 F.3d 609, 619-20 (8th Cir. 2009) (“[T]he failure to file objections eliminates not only the need for de novo review, but *any* review by the district court.”); *see also* Fed. R. Civ. P. 72(b); NECivR 72.2.

Because neither party timely objected to the magistrate judge’s Findings and Recommendation,

IT IS ORDERED:

1. The magistrate judge’s Amended Findings and Recommendation (Filing No. 31) is accepted. Any objections are deemed waived.
2. Plaintiff Amy Frederick’s Motion for Order Reversing Decision of the Commissioner (Filing No. 20) and defendant Leland Dudek’s Motion to Affirm Commissioner’s Decision (Filing No. 25) are each granted in part and denied in part as stated in the Amended Findings and Recommendation.

3. The Commissioner's final decision is reversed in part and remanded for further administrative proceedings pursuant to sentence four of 42 U.S.C. § 405(g).
4. A separate judgment will issue.

Dated this 18th day of February 2025.

BY THE COURT:

A handwritten signature in black ink, reading "Robert F. Rossiter, Jr." with a stylized flourish at the end.

Robert F. Rossiter, Jr.
Chief United States District Judge